

1 HON. JOHN C. COUGHENOUR  
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9 UNITED STATES DISTRICT COURT  
10 FOR THE WESTERN DISTRICT OF WASHINGTON  
11 AT SEATTLE

12 ANTHONY FREY, individually, and on  
13 behalf of all others similarly situated, and  
14 JAMES HEWETT, individually and on  
15 behalf of all others similarly situated,  
16 Plaintiffs,  
17 v.  
18 3PD, Inc., a Georgia corporation,  
19 Defendant.

20 No. C-08-0630-JCC

21 DECLARATION OF MIRANDA P. KOLBE  
22 IN SUPPORT OF PLAINTIFFS'  
23 UNOPPOSED MOTION FOR  
24 PRELIMINARY APPROVAL OF CLASS  
25 ACTION SETTLEMENT AGREEMENT,  
26 CONDITIONAL CERTIFICATION OF  
27 THE SETTLEMENT CLASS, AND  
28 APPROVAL OF FORM AND METHOD OF  
CLASS NOTICE

NOTED FOR CONSIDERATION:  
October 18, 2010

29 DECLARATION OF MIRANDA P. KOLBE IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR  
30 PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT, CONDITIONAL  
31 CERTIFICATION OF THE SETTLEMENT CLASS, AND APPROVAL OF FORM AND METHOD OF CLASS  
32 NOTICE  
33 No. C-08-0630-JCC

SCHUBERT JONCKHEER & KOLBE LLP  
Three Embarcadero Ctr., #1650  
San Francisco, CA 94111  
TEL. 415-788-4220 • FAX 415-788-0161

1 I, Miranda P. Kolbe, declare under penalty of perjury that the following is true and correct:

2 1. I am a partner of the law firm Schubert Jonckheer & Kolbe LLP, and I am one of  
 3 the lawyers representing plaintiffs Anthony Frey and James Hewett ("Plaintiffs") in the above-  
 4 captioned action. I make this declaration in support of Plaintiffs' Unopposed Motion for  
 5 Preliminary Approval of Class Action Settlement Agreement, Conditional Certification of the  
 6 Settlement Class, and Approval of Form and Method of Class Notice. I have personal knowledge  
 7 of the facts stated herein, and if called to testify could and would competently do so.

8 **The Class Action**

9 2. The Action was originally filed by plaintiff Anthony Frey on April 23, 2008 on  
 10 behalf of himself and a putative class of similarly situated persons who provided delivery services  
 11 for 3PD, Inc. ("3PD").

12 3. The Class consists of all individuals who (i) entered into a contract with 3PD to  
 13 perform delivery services for 3PD either on his or her own behalf or on behalf of an entity; and  
 14 (ii) provided such services for 3PD by making or arranging deliveries to customers of The Home  
 15 Depot, Inc. in the State of Washington during the period April 24, 2005 through the date on which  
 16 the Court grants preliminary approval of the Settlement.

17 4. On May 27, 2008, Defendant answered the complaint, filed a counterclaim against  
 18 plaintiff Anthony Frey, and filed a third party complaint against Outback Delivery, LLC. Plaintiff  
 19 Anthony Frey and Outback Delivery, LLC moved to dismiss the counterclaim and third party  
 20 complaint, and on July 21, 2008 the Court dismissed the counterclaim and upheld Defendant's  
 21 third party complaint for indemnification against Outback Delivery, LLC. Outback Delivery, LLC  
 22 answered Defendant's third party complaint on July 31, 2008.

23 5. On May 1, 2009, plaintiff Anthony Frey amended his Complaint, adding James  
 24 Hewett as an additional plaintiff.

25 6. In the Amended Complaint, Plaintiffs alleged that they, like all members of the  
 26 putative Class, had been misclassified by 3PD as independent contractors rather than employees, in  
 27 violation of Washington State law. In addition, Plaintiffs alleged that 3PD made wrongful

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1 deduction from the paychecks of Plaintiffs and the members of the Class in violation of  
 2 Washington State law and failed to pay overtime wages due. Plaintiffs asserted class claims for  
 3 unpaid overtime compensation and interest thereon, compensation for uniform expenses  
 4 wrongfully deducted from their wages by 3PD, compensation for certain 3PD business expenses  
 5 wrongfully deducted from their wages by 3PD, failure to pay wages owed after termination of the  
 6 employment relationship, willful refusal to pay wages owed to employees, fraud, injunctive and  
 7 other equitable relief, and reasonable attorneys' fees and costs, under RCW 49.12.450, RCW  
 8 49.46.130, RCW 49.48.010, RCW 49.52.050, RCW 49.52.060, WAC 296-126-025, and WAC  
 9 296-126-028. In addition, Plaintiffs and the Class sought restitution of all the business expenses  
 10 they were required by 3PD to bear and rescission of the agreements entered into between 3PD and  
 11 Plaintiffs and the Class as void, against public policy, and unenforceable.

12       7. On May 14, 2009, Defendant answered the Amended Complaint, filed a  
 13 counterclaim against plaintiff James Hewett, and added a third party complaint against Jambo  
 14 Transit, LLC. Outback Delivery answered the amended third party complaint on July 2, 2009. On  
 15 August 16, 2009, plaintiff James Hewett moved to dismiss the counterclaim, and that motion was  
 16 granted on November 3, 2009.

17       8. On October 9, 2009, Plaintiffs filed a motion to certify the Class and the Court  
 18 heard oral arguments on the motion on February 17, 2010. In support of their motion for class  
 19 certification, Plaintiffs not only submitted attorney declarations, but also the declarations of eight  
 20 3PD drivers and one former 3PD manager.

21       **Plaintiffs' Counsel Engaged in a Rigorous Investigation of the Claims Prior to**  
 22       **Entering Into Mediation**

23       9. Plaintiffs' Counsel engaged in an extensive investigation of the facts and legal bases  
 24 underlying the claims asserted. After filing the complaint, Plaintiffs' Counsel continued its  
 25 investigation of Plaintiffs' and Class Members' claims. Plaintiffs' Counsel conducted substantial  
 26 discovery related to the classification of Plaintiffs and the Class Members as independent  
 27 contractors, as well as discovery related to Defendant's potential liability under Plaintiffs' statutory

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1 and common law claims. Plaintiffs' formal discovery included numerous sets of document  
 2 requests, yielding production of over 140,000 pages of documents, requests for admission and  
 3 interrogatories, as well as depositions. In addition, Plaintiffs' Counsel conducted substantial  
 4 informal discovery, including interviews of numerous class members, former 3PD managers, and  
 5 other percipient witnesses, as well as review of documents and transcripts filed in other litigation  
 6 and administrative hearings involving defendant 3PD. Additionally, Plaintiffs responded to  
 7 substantial discovery requests from 3PD, including document requests yielding production of  
 8 approximately 11,000 pages of documents by Plaintiffs, requests for admission and interrogatories,  
 9 as well as the depositions of both Anthony Frey and James Hewett, and of five 3PD drivers who  
 10 were percipient witnesses. Plaintiffs' Counsel's lodestar currently exceeds \$1,000,000.

11       10. Although Plaintiffs disagreed with 3PD's factual and legal positions and felt they  
 12 had a good chance of obtaining class certification and ultimately prevailing on the merits, success  
 13 was at no time assured and the costs of continued litigation were certain to be exceptionally high.  
 14 Thus, after Plaintiffs completed their examination and analysis of documents and other information  
 15 obtained from 3PD, as well as the depositions outlined above, the parties engaged in settlement  
 16 negotiations with the assistance of an experienced mediator, Eric Lindauer, Esq.

17       11. On January 20, 2010, the parties began settlement discussions with the assistance of  
 18 Mr. Lindauer. Although the initial mediation was not successful, the parties continued their arm's-  
 19 length negotiations with the help of Mr. Lindauer and ultimately reached agreement on a  
 20 settlement terms sheet, which has been supplemented and memorialized in the Settlement  
 21 Agreement. The terms of the Settlement Agreement are summarized below.

22       **Summary of Settlement Terms**

23       12. The Settlement Agreement provides that 3PD will create a non-reversionary  
 24 settlement fund of \$1,125,000 that will be distributed to the Settlement Class and used to pay  
 25 administrative costs, attorneys' fees and expenses, and incentive awards to the Plaintiffs (the  
 26 "Settlement Fund").

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1       13. After payment of the administrative costs, attorneys' fees and expenses, and  
 2 incentive awards to Plaintiffs, the remaining portion of the Settlement Fund will be distributed to  
 3 Settlement Class Members who submit valid and timely Claim Forms ("Authorized Claimants").  
 4 The Settlement Fund will be distributed to the Authorized Claimants on a *pro rata* basis based  
 5 upon the deductions taken from their respective settlement checks during the weeks that each  
 6 provided delivery services for Home Depot stores in the State of Washington. Specifically, Rust  
 7 Consulting, Inc. (the "Settlement Administrator") shall: (1) use information provided by  
 8 Defendant to determine the total deductions from each Authorized Claimant's settlement  
 9 compensation during the weeks that each Authorized Claimant provided services for Defendant by  
 10 making or arranging deliveries for Home Depot stores in the State of Washington during the Class  
 11 Period; (2) add together all of the individual Authorized Claimants' total deductions to arrive at  
 12 "Total Deductions" for all Authorized Claimants; and (3) then divide each Authorized Claimant's  
 13 total deductions by the Total Deductions, in order to determine a "Percentage Share" of the Total  
 14 Deductions for each Authorized Claimant. Each Authorized Claimant shall be entitled to receive a  
 15 Settlement Award equal to his or her Percentage Share multiplied by the portion of the Settlement  
 16 Fund remaining after payment of all administration costs, and the fee and expense award and  
 17 incentive awards that have been approved by the Court.

18       **This Settlement Should Be Preliminarily Approved**

19       14. This Settlement easily satisfies the criteria for preliminary approval. As noted  
 20 previously, the Settlement was reached through arms'-length negotiations before a highly-regarded  
 21 mediator with ample experience in this area of law. Plaintiffs were represented by counsel with  
 22 extensive experience litigating employment class actions, as set forth in Schubert Jonckheer &  
 23 Kolbe's and Terrell Marshall & Daudt PLLC's firm resumes, attached hereto as Exhibit A and B,  
 24 respectively. Plaintiffs' Counsel negotiated the proposed Settlement with ample knowledge of the  
 25 strengths and weaknesses of this case and the amounts necessary to compensate Class Members  
 26 for their estimated damages. Plaintiffs' Counsel believes that this is an excellent recovery in light  
 27 of the risks presented throughout this lawsuit and is in the best interests of Plaintiffs and the Class.

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15. The Settlement provides substantial payments to the Settlement Class Members. Plaintiffs' Counsel has reviewed 3PD's discovery responses and has identified seventy-three (73) individuals who satisfy the Class definition and an additional six (6) individuals who entered into contracts with 3PD, but who were not identified on 3PD's discovery response stating which 3PD customer they made deliveries as of December 2008. Consequently, there may be as many as seventy-nine (79) identified Class Members. Also, because 3PD's discovery responses only identify Class Members as of December 2008, there may be some additional Class Members who provided services for 3PD beginning in 2009 or 2010.

9       16. The Settlement contemplates no unduly preferential treatment of the Class  
10 representatives or excessive compensation for Plaintiffs' Counsel. Plaintiffs' Counsel believes that  
11 the Settlement is fair, adequate, and reasonable.

12        17. Because the Settlement does not disclose grounds to doubts its fairness, preliminary  
13 approval of the Settlement is appropriate.

15 I declare under penalty of perjury under the laws of the United States that the foregoing is  
16 true and correct. Executed this 18th day of October, 2010 in San Francisco, California.

Miranda P. Kolbe

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# **EXHIBIT A**

## SCHUBERT JONCKHEER & KOLBE LLP

### PRACTICE AND HISTORY

**Schubert Jonckheer & Kolbe LLP** is AV rated by the Martindale-Hubbell Law Directory. Together with its predecessor firms, it has been in operation for thirty years. In addition to prosecuting cases in the California federal and state courts, the firm has been actively involved in securities, antitrust, unfair competition, and employment class actions throughout the United States. Schubert Jonckheer & Kolbe LLP has been Lead Counsel or Co-Lead Counsel in class actions and shareholder derivative cases which have produced recoveries valued at over \$600 million. These have included the following:

**Tucker v. Scrushy, et al.**, No. CV-02-5212 (Alabama Circuit Court, Jefferson County). Co-Lead Counsel in shareholder derivative action on behalf of HealthSouth Corporation alleging breaches of fiduciary duty and insider trading arising from a multi-billion dollar restatement of previously reported financial results. Partial summary judgment for unjust enrichment granted against former CEO Richard Scrushy for restitution to HealthSouth of \$47.8 million bonuses with interest paid to Scrushy during fiscal years 1997-2002 pursuant to a stated policy requiring that bonuses be paid from net profits. In fact, following restatement, it was revealed that the Company had never had net profits from which to pay Scrushy bonuses during the fiscal years 1997-2002. The judgment was affirmed on appeal to the Alabama Supreme Court, **Scrushy v. Tucker**, 955 So.2d 988 (Ala. 2006). Plaintiffs thereafter settled HealthSouth's claims against additional HealthSouth directors and officers for \$100 million, and against its investment bankers, UBS Securities LLC, for an additional \$133 million. Co-Counsel in a related case, **In re HealthSouth Corp. Shareholders Litigation.**, 845 A.2d 1096 (Del. Ch. 2003), aff'd 847 A.2d 1121 (Del. 2004), in which the Delaware Chancery Court granted summary judgment for unjust enrichment and equitable fraud against Richard Scrushy arising from his purported repayment with HealthSouth stock of a \$25 million loan that Scrushy was obligated to pay in cash. The judgment resulted in an immediate \$17.5 million recovery to HealthSouth. We also helped obtain an additional judgment of \$2.9 billion against Richard Scrushy after an eleven day non-jury trial and are pursuing claims in arbitration against Ernst & Young, HealthSouth's former auditors. We have collected approximately \$300 million in judgments and settlements to date for the benefit of HealthSouth, and are in the process of executing on the judgment against Scrushy.

**Hurkes Harris Design Associates, Inc. v. Fujitsu Computer Products of America, Inc.**, Case No. CV 812127 (California Superior Court, Santa Clara County). Co-counsel in class action alleging false advertising and unfair competition in the marketing, advertising, sale and servicing of the Fujitsu MPG-3xxx series and MPF-3xxx-AH series desktop magnetic computer hard disk drive models. We obtained a settlement on behalf of a nationwide class of \$42.5 million.

**3M Transparent Tape Cases** (United States District Court, Northern District of California, Case No. 00-2810-CW). Co-Lead counsel for plaintiffs in a class action brought on behalf of purchasers of 3M transparent tape. Plaintiffs alleged that 3M unlawfully maintained a monopoly in the market for invisible and transparent home and office tape through various arrangements, contracts, agreements, trusts and combinations in restraint of trade designed primarily to restrict the availability of lower priced

transparent tape products to consumers and to maintain high retail prices for its Scotch Brand retail products. We obtained a nationwide settlement valued at approximately \$42 million.

**Bonneville Pacific Corporation Securities Litigation**, No. 92-C-181-S (District of Utah). Co-Lead Counsel in securities class action involving fraudulent financial statements by a large power cogeneration company. We obtained settlements totaling \$26 million for the class, which recovered 100% of its damages, in one of the largest securities fraud cases in Utah history. We also obtained a decision from the Utah Supreme Court holding that plaintiffs need not plead or prove reliance to proceed under the Utah Uniform Securities Act. **Gohler v. Wood**, 919 P. 2d 561 (Utah 1996).

**Qwest Communications International, Inc. Derivative Litigation**, No. 02-CV-8188 (Colorado District Court, City and County of Denver). Co-Lead Counsel in shareholder derivative action alleging officer and director breaches of fiduciary duty and insider trading arising out of massive earnings restatement by telecommunications company. Defendants attempted to derail the case, seeking a stay based upon previously filed but inactive Federal derivative action. We defeated the motion, reviewed and analyzed over 7 million pages of documents, and recovered \$25 million for the company. The settlement included important corporate governance changes, including the requirement of a lead independent director when the chairman of the board is also the chief executive officer.

**Kirschenbaum v. Electronic Arts, Inc.**, Case No. CIV 440876 (California Superior Court, San Mateo County). Co-Lead Counsel in class action seeking to recover unpaid overtime compensation for computer graphics artists employed in California by Electronic Arts Inc. (“EA”), the world’s largest manufacturer of computer video games. The case was settled after the parties conducted formal and informal discovery, and we reviewed thousands of pages of company records. The settlement totaled \$15.6 million, for approximately 618 class members. We believe this is the first class action involving recovery of overtime compensation for computer graphics artists in the electronic game industry.

**Raider v. Sunderland**, Civil Action No. 19357 NC (Delaware Chancery Court). Co-Lead Counsel in shareholder class action alleging breach of fiduciary duty by controlling shareholders of large cement company in connection with its acquisition of related company owned by controlling shareholders. We recovered \$15 million (\$8 per share) for minority shareholders after obtaining class certification, reviewing approximately 30,000 documents, deposing numerous fact and expert witnesses, and preparing the case for trial. The recovery exceeded 50% of the damage calculation of plaintiff’s valuation expert.

**Hasty v. Electronic Arts, Inc.**, Case No. 444821 (California Superior Court, San Mateo County). Co-Lead Counsel in class action seeking to recover unpaid overtime compensation for current and former computer programmers employed in California by Electronic Arts Inc. (“EA”), the world’s largest manufacturer of computer video games. The case was settled after the parties conducted formal and informal discovery, including numerous depositions and review of thousands of pages of company records. The

settlement totaled \$14.9 million, for approximately 600 class members. We believe this is the first class action involving recovery of overtime compensation for computer programmers in California.

**Shea v. Vidinsky**, Case No. CIV CGC-04-437473 (California Superior Court, San Francisco County). Counsel in derivative case brought on behalf of Valin Corporation alleging breach of fiduciary duty, abuse of control, waste of corporate assets, violation of Cal. Corp. Code sections 25402 and 25403, constructive fraud and unjust enrichment. In response to the lawsuit, Valin's Board of Directors appointed a Special Litigation Committee ("SLC"). Faced with separate summary judgment motions brought by the SLC and by individual defendants, we successfully obtained a settlement for the Corporation valued at over \$12.5 million.

**ADAC Laboratories Derivative Litigation**, No. CV 779262 (California Superior Court, Santa Clara County). Co-Lead Counsel in shareholder derivative action alleging officer and director breaches of fiduciary duty and insider trading arising from false financial statements issued by a scientific instruments manufacturer. These financial statements were restated after "side letters" and other improper revenue recognition practices were uncovered. Defendants sought a stay based upon federal securities class actions arising from the same facts. We defeated that motion, obtained thousands of documents well ahead of the federal actions, and recovered \$12 million for the company, representing the bulk of its insurance coverage.

**Franz Inc. v. Quantum Corporation**, Case No. CGC-03-423301 (California Superior Court, San Francisco County). Co-lead Counsel in class action brought on behalf of California businesses and residents who purchased DLTtape IV™ tapes, claiming price fixing and other anticompetitive actions. We obtained a class action settlement valued at \$10.35 million.

**In re OSB Antitrust Litigation** (U.S. District Court, Eastern District of Pennsylvania, Master File No. 06-826). Co-Lead Counsel for certified class of indirect purchasers of Oriented Strand Board ("OSB"). Plaintiffs alleged a conspiracy among eight major OSB manufacturers to inflate OSB prices by restricting production and other anticompetitive practices, in violation of the Sherman Antitrust Act and numerous state antitrust laws. We obtained a settlement of \$9.94 million on behalf of consumers in 20 states and the District of Columbia.

**Wilson v. Sony Computer Entertainment, Inc.**, Case No. 444815 (California Superior Court, San Mateo County). Co-Lead Counsel in class action seeking to recover unpaid overtime compensation for computer graphics artists employed in California by Sony Computer Entertainment, Inc. The case was settled for \$8.5 million. In addition, Sony agreed to reclassify class members with a job title of Associate Artist and Artist 1 as nonexempt employees under the wage and hours laws of California and the federal Fair Labor Standards Act.

**In Re Savings Investment Service Corporation Loan Commitment Litigation**, MDL 718 (Western District of Oklahoma). Co-Lead Counsel in securities class action arising

from default of \$9.85 million issue of industrial revenue bonds issued to finance a hotel in Westminster, Colorado. After extensive discovery and motion practice we obtained a recovery of approximately \$8.0 million for the class.

**Emulex Shareholder Derivative Cases**, Judicial Coordination Proceeding No. 4194 (California Superior Court, Orange County). Co-Lead Counsel in shareholder derivative actions alleging officer and director breaches of fiduciary and insider trading arising from order delays for optical networking hardware. Although the case was initially stayed, we succeeded in lifting the stay and obtaining over 100,000 pages of company documents, eventually obtaining an \$8 million settlement for the company.

**Garbini v. Protection One, Inc.**, Civil Action No. 99-3755 (Central District of California). Lead Counsel in securities class action arising from three successive restatements of three years' audited and publicly reported financial results by America's second-largest home security monitoring company. Plaintiffs asserted claims under Section 11 of the Securities Act of 1933 and Section 10 of the Securities Exchange Act of 1934, alleging use of an excessively long period to amortize the cost of acquired customer accounts. We obtained a settlement of \$7.76 million for the class. In a related appeal, we successfully challenged the dismissal of the company's auditors, Arthur Andersen. The ruling clarified plaintiffs' obligations to allege damages under the Securities Act of 1933. **Garbini v. Protection One, Inc.**, 49 Fed.Appx. 169, [2002 Transfer Binder] Fed. Sec. L. Rep.(CCH) ¶92,018 (9<sup>th</sup>Cir. October 11, 2002).

**In Re Providian Financial Corporation Derivative Litigation**, Case No. 401954 (California Superior Court, City and County of San Francisco). Co-Lead Counsel in shareholder derivative action alleging breaches of fiduciary duty and insider trading by officers and directors of a large sub-prime credit card lender. Case arose from company's undisclosed change of accounting for customer bankruptcies and alleged failure to maintain adequate reserves for uncollectible accounts. After extensive document discovery we obtained a settlement of \$6.5 million for the company.

**In Re Structural Dynamics Research Corporation Derivative Litigation**, Case No. C-1-94-650 (Southern District of Ohio). Co-Lead Counsel in shareholder derivative action arising from earnings restatement resulting from accounting fraud in the Far East operations of NASDAQ-listed computer software company. After extensive discovery, we obtained a settlement of \$5.0 million for the company. (SDRC)

**In Re S3 Derivative Litigation**, No. CV-77-0254 (California Superior Court, Santa Clara County). Co-lead counsel in shareholder derivative litigation involving S3, now known as SonicBLUE Corporation, which was a leading manufacturer of graphics accelerator chips. Case arose from earnings restatements and alleged insider trading resulting from improper recognition of revenue on sales in Far East. After discovery, we obtained a cash settlement of \$4.65 million for the company, which represented the bulk of insider trading damages. (SBLU)

**In Re VISX Securities Litigation**. Master File No. C94-2-649-RPA (Northern District of California). Co-Lead Counsel in securities class action arising from misrepresentations

as to status of clinical trials by a NASDAQ-listed laser vision correction company. We obtained a settlement of \$4.0 million for the class. (VISX)

**Isaac v. Falcon Classic Cable Income Properties, L.P., et al.**, No. BC-177205 (California Superior Court, Los Angeles County). Lead Counsel in class action arising from general partner's purchase of the assets of a cable television limited partnership at allegedly inadequate price. We obtained a recovery of \$2.8 million for the limited partners.

**Bilunka v. Sanders**, [1994-95 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶98,314 (N.D. Cal. 1994). Co-lead counsel in shareholder derivative action arising from misrepresentations by officers and directors of Advanced Micro Devices, a leading microchip manufacturer, regarding a purportedly "clean" clone of a microchip developed by Intel Corporation. The opinion by Judge Ware of the Northern District of California established two key principles for California derivative cases: (1) California's insider trading statute, Corporations Code §25502.5, applies to California based corporations incorporated in Delaware, and (2) where the board of directors is evenly divided between interested and disinterested members, a shareholder demand upon the board is futile and therefore excused. We ultimately obtained a recovery of \$2.25 million for the company.

**In re IDB Communications Group, Inc. Securities Litigation**, Master File No. CV-94-3618-RG (JGX) (Central District of California). Co-Lead Counsel in shareholder derivative action arising from misleading financial statements issued by NASDAQ-listed telecommunications company. We obtained a settlement of \$2.0 million for the company.

**In re Atchison Casting Corporation Securities Litigation**, Master File No. 01-2013-JWL

(District of Kansas). Lead Counsel in a securities class action arising from the restatement of four years' of audited financial results by this Kansas-headquartered operator of 20 ferrous casting facilities, following revelation of accounting improprieties at the company's Pennsylvania Foundry Group. We obtained a settlement of \$1.8 million for the class.

**In Re Bexar County Health Facilities Development Corporation Securities Litigation**, MDL 768 (Eastern District of Pennsylvania). Co-Lead Counsel in securities class action arising from default of industrial revenue bonds issued to finance a retirement facility in San Antonio, Texas. We obtained a settlement of \$1.5 million for the class.

**Eleanor Gorsey, et al. v. I.M. Simon & Co., Inc., et al.**, 121 F.R.D.135 (D. Mass 1988). Co-Lead Counsel in securities class action litigation arising from default of industrial revenue bonds issued to finance a retirement facility in South Bend, Indiana. We obtained a settlement of \$1.2 million for the class.

**Sheehan v. Little Switzerland**, 136 F. Supp. 2d 301 (D. Del 2001). Lead counsel in securities class action arising from failed merger between Little Switzerland, Inc., a duty-free retailer, and Destination Retail Holdings Corporation, a Bahamian retailer. The

court upheld plaintiff's claim that the company's disclosures regarding the financing for the merger were false and misleading, and that plaintiff's allegations of wrongful intent satisfied the strict pleading standards of the Private Securities Litigation Reform Act of 1995. We obtained a recovery of \$1.05 million for the class, representing approximately 75% of estimated damages. (LSVI)

**Veterinary Centers of America Securities Litigation**, Case No. BC 178 615 (California Superior Court, Los Angeles County). Lead Counsel in shareholder derivative action arising from misrepresentations and insider trading by officers and directors of publicly traded chain of veterinary hospitals. We obtained a recovery of \$1.0 million for the company. (VCAI)

**Cirrus Logic Securities Litigation**, Master File No. C-95-3978-EAI (Northern District of California). Lead Counsel in shareholder derivative action resulting from overstated financial statements and other violations of generally accepted accounting principles by large manufacturer of multimedia products. We obtained a settlement of \$1.0 million for the company. (CRUS)

Schubert Jonckheer & Kolbe LLP has also participated as counsel in class action or derivative cases involving the following companies:

3M Corporation (MMM)	Bay Area Cellular Telephone Co. (BACTC)
aaiPharma Inc. (AAII)	Blockbuster Video (BBI)
ABM Industries Incorporated (ABM)	Borders Group, Inc.
Abbott Laboratories, Inc. (ABT)	Boston Scientific Corporation (BSX)
Activision, Inc. (ATVI)	Bre-X Corporation (BXMN)
Adaptec, Inc. (ADPT)	Broadcom Corporation (BRCM)
Adobe Systems Incorporated (ADBE)	Brocade Communications Systems, Inc. (BRCD)
Adelphia Communications Corporation (ADLA)	California Amplifier, Inc. (CAMP)
Advanced Micro-Circuits Corporation (AMCC)	Callidus Software Inc. (CALD)
Advanced Micro Devices (AMD)	Candies, Inc. (CAND)
Alcatel Alsthom (ALA)	Caremark, Inc. (CMX)
Amazon.com, Inc. (AMZN)	Caremark International Inc.
America First Financial (AFFFZ)	Caribbean Cigar Co. (CIGRD, CIGRW)
America Online, Inc. (AOL)	Centennial Technologies, Inc. (CENL)
American Bank Note Holographics, Inc. (ABH)	Chalone Wine Group Ltd.
American Express Company (AXP)	Charles Allmon Trust
American Income Life Insurance Company	Chiron Corporation
Archer-Daniels-Midland Company (ADM)	Cisco Systems, Inc. (CSCO)
Ariba, Inc. (ARBA)	Citizen Utilities Company (CZN)
Ash Grove Cement Company (ASHG.PK)	CNF, Inc. (CNF)
Aspec Technology, Inc. (ASPC)	Complete Management, Inc. (CPMI)
Assisted Living Concepts, Inc. (ALF)	CompuMed, Inc. (CMPD)
Atchison Casting Corp. (FDY)	Coram Healthcare Corporation (CRH)
Aurora Foods, Inc. (AOR)	Corrpro Cos. Inc. (CO)

Creative Technology Ltd. (CREAF)	JWP, Inc.
Critical Path, Inc. (CPTH)	Ketema
Cyberguard Corporation (CYBG)	Kidder Peabody & Co.
Cylink Corporation (CYLK)	Kinder Morgan
Del Global Technologies Corporation (DGTC)	Knoll, Inc.(KNL)
Digital Equipment Corp. (DEC pa)	Koger Properties
Digital Lightwave, Inc. (DIGL)	Legato Systems, Inc. (LGTO)
Ditech Communications Corp. (DITC)	Lernout & Hauspie Speech Products, N.V. (LHSP)
DoubleClick, Inc. (DCLK)	Littlefield, Adams & Company (FUNW)
eBay, Inc. (EBAY)	Logitech, Inc.
Electronic Arts, Inc. (ERTS)	Louisiana-Pacific Corporation (LPX)
Employee Solutions, Inc. (ESOL)	Macromedia, Inc. (MACR)
Emulex Corporation (EMLX)	Marsh & McLennan Companies, Inc. (MMC)
Enron Corporation	Martha Stewart Living Omnimedia, Inc. (MSO)
Fen-Phen Diet Pill Litigation	Maxxam, Inc. (MXM)
Fine Host Corp. (FINE)	McKesson HBOC, Inc. (HBOC)
First Merchants Acceptance Corp. (FMAC)	Medaphis Corporation (MEDA)
First Virtual Communications, Inc. (FVC)	Media Vision
Flat Glass Antitrust Litigation	Med/Waste, Inc. (MWDSE)
FLIR Systems Inc. (FLIR)	Mercury Finance Company (MFNNQ)
Ford Motor Company (F)	Mercury Interactive Corporation (MERQ)
Formula One Administration, Ltd.	Micron Technology, Inc. (MU)
FPA Medical Management, Inc. (FPAM)	Mirant Corporation (MIR)
Frederick's of Hollywood	Mitek Systems, Inc. (MITK)
Fujitsu Computer Products of America	Molina Healthcare, Inc. (MOH)
FVC.COM, Inc. (FVCC)	Motorcar Parts & Accessories, Inc. (MPAA)
Gateway, Inc. (GTW)	NetManage, Inc. (NETM)
Gencor Industries, Inc. (GCRX)	Netopia, Inc. (NTPA)
Genzyme Corporation (GENZ)	Network Computing Devices, Inc. (NCDI)
Greyhound Lines, Inc. (BUS)	Network Solutions, Inc. (NSOL)
Guidant Corporation (GDT)	New Century Financial Corporation (NCEN)
H&R Block, Inc. (HRB)	Network Associates, Inc. (NETA)
Hanover Compressor Company (HC)	Network Solutions, Inc.
HealthSouth Corporation (HLSH )	North Face Inc. (TNFI)
Herbalife International, Inc. (HERBA)	Novartis AG (NVS)
Hewlett-Packard Corporation (HPQ)	OCA, Inc. (OCA)
The Home Depot, Inc. (HD)	Orbital Sciences Corporation (ORB)
Honda Motor Company (HMC)	Pacific Gateway Enterprises
HPL Technologies, Inc. (HPLA)	Pacific Telephone Company
Indianapolis Motor Speedway Corp.	Palm, Inc. (PSRC)
Impac Mortgage Holdings, Inc. (IMH)	PalmOne, Inc. (PLMO)
Informix Corporation (IFMX)	PennCorp Financial Group, Inc. (PFG)
Inso Corporation (INSO)	PeopleSoft, Inc. (PSFT)
Intel Corporation (INTC)	Peregrine Systems, Inc. (PRGN)
Intershop Communications AG (ISHP)	PerkinElmer, Inc. (PKI)
Interspeed, Inc. (ISPD)	Philip Services Corporation
JDS Uniphase Corporation (JDSU)	

Phycor, Inc. (PHYC)  
Presstek Inc. (PRST)  
Protection One, Inc. (US:POIX)  
Providian Financial Corporation (PVN)  
Quaker State Corporation (KSF)  
Qwest Communications International Inc. (Q)  
Quantum Corporation (DSS)  
Quintus Corporation (QNTS)  
Quovadx, Inc. (QVDX)  
Rambus, Inc. (RMBS)  
Riverstone Networks, Inc. (RSTN)  
Roberds, Inc. (RBDS)  
Saf T Lok, Inc. (LOCK)  
Safeskin Corporation (SFSK)  
Safety-Kleen Corporation (SKLN)  
Salomon Bros.  
Schlotzsky's Inc. (BUNZ)  
Seagate Technology Inc. (SEG)  
Secure Computing Corporation (SCUR)  
Shiva Corporation (SHVA)  
Silicon Graphics, Inc. (SGI)  
Silicon Image, Inc. (SIMG)  
Silicon Storage Technology, Inc. (SSTI)  
Sipex Corporation (SIPX)  
Sirena Apparel Group, Inc. (SIRN)  
SmarTalk Teleservice, Inc. (SMTK)  
Sonus Networks, Inc. (SONS)  
Sony Computer Entertainment America, Inc.

Spanlink Communications, Inc. (SPLK)  
Spectrum Information Technologies, Inc. (SITI)  
Sprint Spectrum L.P. (FON)  
Star Gas Partners, L.P. (SGU)  
Sumitomo Metal Industries, Ltd. (SMMLY)  
Summit Technology, Inc. (SMCT)  
SupportSoft, Inc. (SPRT)  
Sybase, Inc. (SYBS)  
Syncronys Softcorp (SYCR)  
T2  
Telebit Corporation  
Telxon Corporation (TLXN)  
Tenera, Inc. (TNR)  
Terayon Communication Systems, Inc. (TERN)  
Tibco Software, Inc. (TIBX)  
Toys R Us, Inc. (TOY)  
Tut Systems, Inc. (TUTS)  
TwinLab Corporation (TWLB)  
Unify Corporation (UNFY)  
U.S. Trust Corporation  
U.S. West, Inc. (USW)  
U.S. Wireless Corporation  
Ventro Corporation  
Verisign, Inc. (VRSN)  
Versata, Inc. (VATA)  
Websecure, Inc. (WEBS)  
Worldcom, Inc. (WCOEQ)  
Xicor, Inc.

ATTORNEYS

**ROBERT C. SCHUBERT** received a B.S. degree from the New York State School of Industrial and Labor Relations at Cornell University in 1966, where he graduated first in his class. He received his J.D. *cum laude* from Harvard Law School in 1969, after which he taught law, first at the Columbia University School of Law (1969-1970), and then at Golden Gate University School of Law (Assistant Professor, 1970-1975). Since that time he has been actively engaged in the practice of law, at both the trial and appellate levels. He specializes in complex litigation, particularly securities and antitrust class actions and shareholder derivative suits. He is a member of the State and Federal bars of California (since 1974), Massachusetts (since 1972) and New York (since 1970). In addition he has been admitted *pro hac vice* in the following courts, among others: United States District Courts for the Eastern District of Pennsylvania, the Middle District of Florida, the Northern District of Georgia, the Southern District of Ohio, the Western District of Oklahoma, the Western District of Washington, the Western and Northern Districts of Texas, the Northern and Central Districts of Illinois, the Northern District of Alabama, the Districts of Colorado, Oregon, Delaware, Utah, Montana, Arizona and New Hampshire, the Superior Courts of Alabama, Alaska, Connecticut, Colorado and Illinois, and the Delaware Court of Chancery. He has participated in discovery proceedings throughout the United States and the United Kingdom. He is also an arbitrator, and since 1971 has arbitrated numerous disputes under the auspices of the Federal Mediation and Conciliation Service. He is the author of several published articles, and lectures on class actions at the University of California, Hastings College of Law.

**WILLEM F. JONCKHEER** received his B.A. degree from Colgate University in 1990. He was awarded his J.D. degree in 1995 from the University of San Francisco School of Law. He has been a law intern with the Pacific Stock Exchange and the U.S. Securities & Exchange Commission. Mr. Jonckheer was admitted to the State Bar of California in 1995.

**MIRANDA P. KOLBE** received her B.A. from Hamilton College. She was awarded her J.D. degree from the University of California at Berkeley, Boalt Hall, where she won the Prosser Prize in Civil Procedure and the Moot Court Advocacy Award. In addition, she served as an Instructor for Boalt's Legal Research and Writing class, and interned at the Prison Law Office in San Quentin, California, while at Boalt. After graduating, she served as a full-time legal researcher in the Civil Division of the San Francisco Superior Court, and then joined Schubert & Reed LLP as an associate in 2001.

**DUSTIN L. SCHUBERT** received his B.A. from University of California at Berkeley in 2003. He was awarded his J.D. degree in 2007 from Vanderbilt University Law School. Mr. Schubert was admitted to the State Bar of California in 2007. Mr. Schubert previously interned with the Superior Court of California in and for the City and County of San Francisco, for the Hon. A. James Robertson II. Mr. Schubert has also interned for Bay Area Legal Aid.

# **EXHIBIT B**



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## *Firm Résumé*

Terrell Marshall & Daudt PLLC (“TMD”) is a law firm in Seattle, Washington that focuses on complex civil and commercial litigation with an emphasis on employment, consumer protection, product liability, real estate, and personal injury matters. The attorneys of Terrell Marshall & Daudt PLLC have extensive experience in class actions, collective actions, and other complex matters. They have been appointed lead or co-lead class counsel in numerous cases at both the state and federal level. They have prosecuted and defended a variety of multi-million-dollar disputes involving consumer fraud, securities fraud, product defect, and anti-trust issues. The defendants in these cases have included companies such as Walmart, Microsoft, Best Buy, Dell, Toyota, Sallie Mae, Comcast, ABM Industries, Inc., AT&T, T-Mobile, Weyerhaeuser, Behr Products, and American Cemwood.

Beth E. Terrell, a founding member of Terrell Marshall & Daudt PLLC, concentrates her practice in complex litigation, including the prosecution of consumer, defective product, anti-trust, and wage and hour class actions. Ms. Terrell has served as co-lead counsel on numerous multi-state and nationwide class actions. She also handles a variety of employment issues including employment discrimination, restrictive covenant litigation, and pre-litigation counseling and advice. Ms. Terrell received a B.A., *magna cum laude*, from Gonzaga University in 1990. In 1995, she received her J.D. from the University of California, Davis School of Law, *Order of the Coif*. Ms. Terrell is a member of the State Bar of California and the Washington State Bar Association. Prior to forming TMD in May 2008, Ms. Terrell was a member of Tousley Brain Stephens PLLC.

Toby J. Marshall, also a founding member of Terrell Marshall & Daudt PLLC, is a graduate of the University of Washington School of Law. Mr. Marshall concentrates his practice on complex civil litigation and has represented clients in a wide variety of class actions, including wage and hour, securities fraud, product defect, and consumer fraud cases. He has been actively involved in the prosecution of numerous class actions, including *Kirkpatrick v. Ironwood Communications, Inc.*, *Godfrey v. Chelan County PUD*, *McGinnity v. AutoNation, Inc.*, and *Ramirez v. Precision Drywall, Inc.* In the *Ramirez* matter, Mr. Marshall served as lead counsel through trial, obtaining a \$2.1 million judgment on behalf of the class. In the *McGinnity* matter, Mr. Marshall served as co-lead counsel throughout arbitration, securing a judgment of more than \$2.5 million. Mr. Marshall has tried and won other cases in state and federal courts and has also successfully briefed and argued cases before the Washington State Court of Appeals and the Ninth Circuit Court of Appeals. He has been named a “Rising Star” in 2005, 2006, 2007, 2009 and 2010 by Washington Law & Politics. Prior to forming Terrell Marshall & Daudt PLLC in May 2008, Mr. Marshall was an associate at Tousley Brain Stephens PLLC and was selected to become a member at TBS in 2006.

Jennifer Rust Murray is also a founding member of Terrell Marshall & Daudt PLLC. Ms. Murray graduated from the University of Washington School of Law in 2005 where she was a member of the Washington Law Review. Her law review article entitled “Proving Cause in Fact under Washington’s Consumer Protection Act: The Case for a Rebuttable Presumption of Reliance” won the Carkeek prize for best submission by a student author. Prior to law school, Ms. Murray earned her Ph.D. in Philosophy from Emory University. Ms. Murray has been an active member of the Washington State Bar Association since her admission to the bar in 2005. In 2010, Ms. Murray was admitted to the Oregon State Bar. Ms. Murray focuses her practice on complex commercial litigation with an emphasis on consumer and employment issues and has represented both plaintiffs and defendants in many class and collective actions including *Kirkpatrick v. Ironwood Communications, Inc.*, *Morden v. T-Mobile*, *McGinnity v. AutoNation, Inc.*, *Godfrey v. Chelan County P.U.D.*, *Barnett v. Wal-Mart*, and *Carroll v. Nuprecon*.

Michael D. Daudt, founding member of Terrell Marshall & Daudt PLLC, handles litigation involving construction defects in condominiums and commercial buildings, homeowner association issues, LLC and partnership disputes, alcoholic beverage distribution and regulation, insurance coverage, condemnation, land use, environmental, and real property matters. He graduated *summa cum laude* from Abilene Christian University and earned his J.D. at Boalt Hall School of Law at the University of California, Berkeley, where he was Associate Editor of the *California Law Review*. Mr. Daudt is a member of the bar in Washington and California. He has been named a “Rising Star” by *Washington Law & Politics* magazine from 2002 through 2005 and is rated “AV” in Martindale Hubbell. Mr. Daudt is also a frequent speaker at continuing legal education seminars in several areas, including construction defects, insurance, and homeowner associations.

Kimberlee L. Gunning is the newest member of Terrell Marshall & Daudt PLLC. Ms. Gunning graduated from the University of Washington School of Law in 2004. Before joining the firm, Ms. Gunning had a solo practice focused on consumer class actions, employment law and appeals in all areas of civil and administrative law and was also an associate at Tousley Brain Stephens for 4 years. Ms. Gunning has extensive experience in complex civil litigation and has acted as co-counsel in several consumer class actions, including *Spafford v. EchoStar*; *Hartman, et al. v. Comcast*; *Seraphin v. AT&T Internet Services, Inc., et al*; *Vernon, et al. v. Qwest*, and *Grosvenor v. Qwest and Godoy v. AT&T Wireless*.

Erika L. Nusser has been an associate at Terrell Marshall & Daudt PLLC since January 2009. Ms. Nusser graduated from the University of San Francisco School of Law in 2008 and became a member of the Washington Bar that same year. She focuses her practice on complex litigation, including employment and consumer fraud litigation. Ms. Nusser recently served as second chair counsel during the trial of *Ramirez v. Precision Drywall, Inc.* matter in which TMD successfully obtained a \$2.1 million judgment against Defendants. Ms. Nusser also enjoys representing individual clients in employment and discrimination matters.

Marc C. Cote has been an associate at Terrell Marshall & Daudt PLLC since October 2009. Mr. Cote graduated from the University of Washington School of Law in 2007 where he was Executive Articles Editor of the Washington Law Review. His law review article, "Getting Dooced: Employee Blogs and Employer Blogging Policies under the National Labor Relations Act," won the Carkeek Prize for best submission by a student author. After law school, Mr. Cote served as a law clerk for Justice Walter Carpeneti of the Alaska Supreme Court. He was selected as a "Rising Star" by Washington Law & Politics Magazine for 2010. Mr. Cote focuses his practice on employment law and consumer law, including both individual cases and class actions.

TMD is currently litigating the following consumer protection class actions:

- *Milligan, et al. v. Toyota Motor Sales, Inc.*, filed in 2009 on behalf of owners of 2001 – 2003 Toyota RAV4s containing defective Electronic Computer Modules (“ECM”) which cause harsh shifting conditions and permanent damage to the transmissions.
- *Arthur v. Sallie Mae*, filed in 2009 on behalf of consumers who received automated, pre-recorded phone calls on their personal cell phones in violation of the TCPA.
- *Kitec Consolidated Cases*, in which TMD serves as co-counsel in a national class action lawsuit against the manufacturers of defective hydronic heating and plumbing systems.
- *Seraphin v. AT&T Internet Services, Inc., et al.* is a multi-state class action filed in 2009 on behalf of AT&T internet customers who paid \$20 a month or less for internet service and were assessed and Early Termination Fee (“ETF”) when they cancelled service.
- *Qwest Price for Life and ETF Class Actions*, filed on behalf of consumers whose rates for high speed internet service were increased despite a “Price for Life” contract agreement, or who were charged an Early Termination Fee (“ETF”) for cancelling their high speed internet service prior to the end of their term commitment, even if they did not knowingly agree to a term commitment and were not told about the ETF prior to cancelling service.
- *Comcast Robocalling Class Actions*, two consolidated cases filed on behalf of consumers who received automated, pre-recorded solicitation

phone calls from Defendants in violation of the Washington Consumer Protection Act.

- *Carideo v. Dell, Inc.*, filed on behalf of owners of defective Inspiron 5160, 1100, 1150 and 5100 laptop computers who paid to repair or replace their computers due to multiple design and manufacturing defects.
- *Fine v. T-Mobile USA, Inc.*, a class action brought on behalf of consumers who participated in a promotional program known as “FLY FREE in ’08.” Despite having satisfied the terms of the offer, Plaintiff and other members of the class never received the free round-trip flight that T-Mobile promised.
- *In re General Motors OnStar Litigation*, a consolidated group of lawsuits consumers brought against multiple auto manufacturers due to the failure of analog OnStar equipment in their vehicles and the resulting termination of OnStar service.

In addition to a successful consumer protection practice, TMD has concurrently litigated the following wage and hour class actions:

- *Barnett et al. v. Wal-Mart Stores, Inc.*, in which we represented a certified class of more than 88,000 employees alleging wage and hour violations. After more than seven years of litigation, we obtained a \$35,000,000 settlement on behalf of the class. That settlement was approved in July 2009.
- *McGinnity et al. v. AutoNation, Inc. et al.*, in which we represented a certified class of more than 500 employees who were denied vacation benefits they had earned. After nearly two years of litigation before an arbitrator, we obtained an award of \$2.34 million on behalf of the class. We successfully defended the award on appeal, and the Washington Supreme Court denied defendants’ petition for review. A judgment in excess of \$2,600,000 was satisfied in September 2009.
- *Telecommunications Company Lawsuit II*, in which we represented a certified class of more than 2,400 current and former employees in Washington and Oregon who alleged wage and hour violations. We obtained a \$3,000,000 settlement after nearly four years of intense litigation, and the court granted final approval of the settlement in March 2009.
- *Godfrey et al. v. Chelan County Public Utility District*, in which we represented a class of 81 employees who were denied pay for all hours worked. The case settled in 2008, and the settlement was approved by the U.S. District Court for the Eastern District of Washington.

- *Telecommunications Company Lawsuit I*, in which we represented a certified class of 300 employees who alleged wage and hour violations. The case settled in 2007, and the settlement was approved by the U.S. District Court for the Western District of Washington.
- *Ramirez et al. v. Precision Drywall, Inc.*, in which we represented a certified class of workers who allege they were not paid for all hours worked, and were not provided with proper rest and meal breaks. The case was tried in King County Superior Court before a jury with the Honorable Timothy Bradshaw presiding. TMD successfully obtained a \$2.1 million judgment for the Plaintiff Class and is currently working on enforcing the judgment against multiple Defendants.
- *Reese v. Dycos, Inc.*, in which we represented a class of over 1,700 current and former employees in Washington and Oregon who alleged wage and hour violations. We obtained a \$1.4 million settlement on behalf of the Class. The settlement received final approval from the Court on April 23, 2010. Class members who submitted claims received their awards in June 2010.
- *Lettic v. Spectrum Glass Co., Inc.*, in which we represent a certified class of 300 current and former employees who allege wage and hour violations regarding time shaving practices and inadequate meal and rest breaks. We are currently preparing for the upcoming trial of this matter in King County Superior Court before the Honorable Timothy Bradshaw.
- *Khadera, et al. v. ABM Industries, Inc.*, which we filed on behalf of more than 5,000 current and former janitorial workers in Washington who alleged wage and hour violations. The Honorable Judge Ricardo S. Martinez granted Class Certification on February 19, 2010 under the FLSA. During the opt-in period, more than 350 eligible workers chose to become part of the Class.